

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WINDWARD BORA LLC,

Plaintiff,

v.

JOHN FRUSCIANTE, et al.,

Defendants.

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ORDER

No. 20-CV-07511 (PMH)

PHILIP M. HALPERN, United States District Judge:

A Request for Clerk's Certificate of Default was filed by *pro se* defendant Scores on November 4, 2021 and entered by the Clerk's Office on November 5, 2021. (Doc. 43). Scores seeks a Certificate of Default against defendant John Frusciante on Scores's cross-claims against him which were filed on December 28, 2020 (Doc. 20) and served on Frusciante on May 13, 2021 (Doc. 38). Because Frusciante had not appeared in the action, Scores was required to serve his cross-claims on Frusciante under Federal Rule of Civil Procedure 4. *See* Fed. R. Civ. P. 5(a)(2); *Reid v. Dan Yant, Inc.*, No. 15-CV-2358, 2018 WL 8014197, at *2 (E.D.N.Y. Oct. 25, 2018).

Following a conference held on November 30, 2021, the Court directed Scores to determine whether he had properly and timely served defendant Frusciante with the cross-claims. (Doc. 44). Further, the Court directed that by December 17, 2021, if Scores determines that service was proper, he shall do that which is necessary to obtain a Clerk's Certificate of Default and move for a default judgment against Frusciante; and if not, to take such steps as are appropriate so as to effectuate service on Frusciante. (*Id.*).

On December 8, 2021, a Proposed Clerk's Certificate of Default was entered on the docket with a file date of November 4, 2021. (Doc. 45). The document does not properly identify the pleading for which a default is being sought (*i.e.*, the Summons and Answer and Cross-Claims, as

opposed to “the summons and complaint” (*see* Doc. 45)). A Clerk’s Certificate of Default, on this application, will not issue.

Because it is not clear to the Court that the entry of the Proposed Clerk’s Certificate of Default on December 8, 2021 was an attempt at compliance with the Court’s November 30, 2021 Order, defendant Scores is directed, by December 17, 2021, to file a letter advising the Court how he intends to proceed as regards obtaining a default against Frusciante.

Counsel for plaintiff is directed to e-mail a copy of this Order to defendant Scores. The Clerk of the Court is requested to mail a copy of this Order to *pro se* defendant Scores at the address listed on the docket.

SO ORDERED.

Dated: White Plains, New York
December 9, 2021

A handwritten signature in black ink, appearing to read 'Philip M. Halpern', written over a horizontal line.

Philip M. Halpern
United States District Judge